

These are serious matters, and they deserve our serious attention. As elected officials, we have been entrusted for a time with the security of the Nation and with the trust of the people. Quite apart from the specific questions and debates about whether Secretary Clinton is going to be convicted for her crimes, we must grapple with the reality that the public trust, the rule of law, and the security of our Nation have been badly injured by her actions.

In the coming months, the next time that a career military or intelligence officer leaks an important secret that is a legally defined classified matter that relates to the security of our Nation and the security of our Nation's spies, who are putting their lives at risk today to defend our freedoms, one of two things is going to happen: Either that individual will not be held accountable because yesterday the decision was made to set a new, lower standard about our Nation's security secrets, and we will therefore become weaker, or, in the alternative, the decision will be made to hold that person accountable, either by prosecution or by firing. In that moment, that individual and his or her peers and his or her family will rightly ask this question: Why is the standard different for me than for the politically powerful? Why is the standard different for me, a career intelligence officer or a career soldier, than for the former Secretary of State? This question is about the rise of a two-tiered system of justice, one for the common man and one for the ruling political elites. If we in this body allow such a two-tiered system to solidify, we will fail in our duties, both to safeguard the Nation and for the people to believe in representative government and in equality before the law.

This stuff matters. Lying matters. The dumbing down and the debasing of expectations about public trust matter. Honor matters, and woe to us as a nation if we decide to forget this obvious truth of republican government.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:47 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mrs. FISCHER).

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Brian R. Martinotti, of New Jersey, to be United States District Judge for the District of New Jersey.

The PRESIDING OFFICER. Under the previous order, there will be 30 minutes of debate equally divided in the usual form.

The Senator from Pennsylvania.

Mr. TOOMEY. Thank you, Madam President.

#### SANCTUARY CITIES LEGISLATION

I rise to address the legislation we are going to be voting on later this afternoon, two procedural votes to take up legislation. Both bills were inspired by a horrendous event that occurred almost exactly 1 year ago. On July 1, 2015, a 32-year-old woman named Kate Steinle was walking on a pier in San Francisco with her dad, and out of nowhere comes a man who starts firing his weapon at her, shoots her, and within moments Kate Steinle bled to death in her father's arms.

As appalling as that murder was, one of the particularly galling things about it is that the shooter should never have been on the pier that day. The shooter had been convicted of seven felonies and had been deported from America five times because he was here illegally. Even more maddening is that just a few months earlier, San Francisco law enforcement officials had him in their custody. They had him, and the Department of Homeland Security, discovering that fact, put out a request that said: Hold on to this guy. Detain him until we can get one of our guys there to take him into custody because we want to get him out of this country. He is dangerous; we know he is.

What did the San Francisco law enforcement folks do? They said: Sorry, we can't help you. They released him onto the streets of San Francisco, from which he later shot and killed a perfectly innocent young woman.

Why in the world would the San Francisco law enforcement folks release a seven-time convicted felon, five-time deported person who was known to be dangerous, in the face of a request from the Department of Homeland Security? Why would they release such a person? Because San Francisco is a sanctuary city, which means it is the legal policy of the city of San Francisco to refuse to provide any information or to cooperate with a request to detain anyone when the Department of Homeland Security is requesting such cooperation with respect to someone who is here illegally. This is madness. It is unbelievable that we have municipalities that are willfully releasing dangerous people into our communities.

Let me point out that the terribly tragic case of Kate Steinle is not a unique case. According to the Department of Homeland Security in an analysis looking at an 8-month period in 2014—the most recent period for which we have data—sanctuary cities across America released 18,000 individuals and 1,800 of them were later arrested for criminal acts. That is what is happening across America, including in the great city of Philadelphia in my home State of Pennsylvania, which has become a sanctuary city.

Today we are going to vote on two different bills. We are going to take a procedural vote which will determine whether we can proceed to two bills inspired by this terrible tragedy. First is my legislation called the Stop Dangerous Sanctuary Cities Act, S. 3100. I am grateful for my cosponsors, Senators INHOFE, VITTER, COTTON, JOHNSON, CRUZ, and WICKER. Let me explain how this is structured.

There is a court ruling that has caused a number of municipalities that would rather not be sanctuary cities to believe they need to become sanctuary cities. The ruling is from the Third Circuit Court of Appeals, which has jurisdiction over my State of Pennsylvania, and also a Federal district court in Oregon. They have held that if the Department of Homeland Security makes a mistake—let's say it is the wrong John Doe—and they ask a police department somewhere to hold that person, if it turns out they are holding him wrongly, according to these court decisions, the local police department can be held liable even though they were just acting in good faith at the request of the Department of Homeland Security.

Well, that doesn't make any sense, and it is easily corrected. My bill will correct it. What my bill says is that if a person is wrongly held in such a circumstance where the local police are complying in good faith with a request from the Department of Homeland Security, if that happens, the individual wrongly held can still sue, they can still go to court, but they wouldn't go to court against the local police or local municipality, they would take their case against the Department of Homeland Security, where it belongs. After all, it was the error of the Department of Homeland Security that caused the person to be wrongly held. So that solves the problem of a municipality being concerned about a liability that would attach to their doing the right thing.

Given that solution, which is in our legislation, if we pass this and make this law, then there is no excuse whatsoever for any municipality willfully refusing to cooperate with Federal immigration and law enforcement officials.

The second part of my legislation says that if a community nevertheless—despite a lack of legal justification—chooses to be a dangerous sanctuary city, well, then, they are going to lose some Federal funds—specifically, community development block grant funds, which cities get from the Federal Government. They love to spend it on all kinds of things.

The fact is, sanctuary cities impose costs on the rest of us—security costs, costs to the risks we take, the unspeakable costs the Steinle family incurred—so I think it is entirely reasonable that we withhold this funding as a way to hopefully induce these cities to do the right thing.

I say there are two pieces of legislation we will be taking procedural votes

on today. The other is Kate's Law. I commend Senator CRUZ for introducing this legislation. As I pointed out, Kate Steinle's killer had been convicted of seven felonies and deported five times. How many times is this going to happen? What Kate's Law simply says is that there will be a mandatory 5-year prison sentence for someone who illegally reenters the United States after having already been convicted of an aggravated felony and after having been convicted of at least two previous offenses of illegal reentry. If that gets confusing, the bottom line is that they have come into the country four times illegally and have been convicted of an aggravated felony. At some point, they need to go to jail, and that is what Kate's Law does.

Let me get back to my legislation because there is a mistaken impression and I want to set the record straight. Some have argued that if my legislation were passed, if we passed legislation to correct the legal problem and then withhold funding from cities that become sanctuary cities, that might discourage victims of crime and witnesses to crime from coming forward if they are here illegally because they will have a fear of being deported.

Let's be very clear. Our legislation explicitly states that a locality and municipality will not be labeled a "sanctuary jurisdiction"—so they would not be at risk for losing any Federal funds—if their policy is that when a person comes forward as a victim or a witness to a crime, local law enforcement does not share information with DHS and does not comply with a Department of Homeland Security request for a retainer. In other words, there is a big carve-out. There is an exception. There is a carve-out for people who are victims of crime or witnesses of crime, so we don't discourage people from coming forward. I think it makes perfect sense.

Some have also argued erroneously that my bill creates a mandate for local law enforcement to take on the Federal immigration duties—duties that are a part of the Federal Government. The fact is, that is a misreading of the legislation. Our legislation does not require local law enforcement to do anything. It doesn't even require that local law enforcement comply with any requests from the Department of Homeland Security. What it says is that you will be defined as a sanctuary city if you have local legislation that forbids cooperation. That is what it says. So the police can make their best judgment and can cooperate with the administration when they see fit without being in violation of their own laws. Our legislation does not at all impede the enforcement of criminal law, and it does not impose any burdens.

There are four law enforcement groups that have endorsed my bill: the Federal Law Enforcement Officers Association, the National Sheriffs' Association, the National Association of Police Organizations, and the Inter-

national Union of Police Associations, which is an AFL-CIO entity. The reality is that the vast majority of local law enforcement wants to cooperate with the Federal Department of Homeland Security folks, immigration officials, and law enforcement people because they are all about keeping our communities safer and they don't want to release someone onto the streets who is likely to be a criminal or even a terrorist.

Let me stress that support for my legislation is bipartisan, and opposition to the kind of sanctuary city policy that we have in Philadelphia is bipartisan. Ed Rendell is the former mayor of Philadelphia, the former Governor of Pennsylvania, and the former chairman of the Democratic National Committee, and he has criticized the policy Philadelphia has put in place. Mayor Nutter—the recently outgoing mayor—reversed the sanctuary city policy that they used to have in place because he realized it is a bad policy for keeping Philadelphians and Pennsylvanians safe. The Obama administration asked the Secretary of the Department of Homeland Security, Jeh Johnson, to travel to Philadelphia personally, and he pleaded with Mayor Kenney, the mayor of Philadelphia, to at least make some narrow exceptions to the sanctuary city policy precisely so that when we have suspected terrorists in the custody of local police departments and the Department of Homeland Security discovers this, they will get some cooperation so we can take custody of these people.

This, to me, is just common sense. It is not principally about immigration; it is almost entirely about security and keeping dangerous people off our streets.

The vote today is not a final disposition of the legislation; it is a vote on whether we can even take it up and begin a debate.

I don't know how anyone could defend the proposition that we shouldn't even consider this legislation. If someone wants to oppose it, by all means. But the vote we are going to have today is a procedural vote on whether we proceed to this legislation and just begin this discussion. For me, it shouldn't be a question at all. For the safety of the American people, we ought to proceed with this legislation. In my view, the life of Kate Steinle matters.

I hope my colleagues will vote to enable us to proceed, and let's have a vigorous debate about the merits of this, about whether we ought to tolerate sanctuary cities that knowingly and willfully refuse to cooperate with Federal immigration and law enforcement officials. Let's have the discussion, by all means, but let's start by getting on the bill so we can attempt to find a consensus and resolution to this.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BOOKER. Madam President, I rise today in support of the confirma-

tion of Judge Brian R. Martinotti to be a U.S. district court judge for the U.S. District Court for the District of New Jersey. I am very proud to support his nomination and grateful that my senior Senator ROBERT MENENDEZ is here as well.

Judge Martinotti is an outstanding public servant who has honorably served the people of New Jersey in both private practice and public service for decades. I am grateful that Judge Martinotti is finally getting the confirmation vote he deserves more than a year after his nomination. I thank Senator MENENDEZ for his support of this nomination throughout this long process.

During my first year within the Senate, I had the honor to recommend Judge Martinotti to President Obama. He is a talented jurist, he has an impressive legal background, and he is more than qualified to be a Federal judge.

As a judge in the New Jersey Superior Court, Judge Martinotti is a well-known and highly regarded leader in the New Jersey legal community. As a State superior court judge, he served 14 years and has judicial experience, having presided over 90 cases that have gone to judgment. He previously served as a public defender, a prosecutor, a tax attorney, and even city council member, the same position where I began my political career. He served as a legal counsel for the Italian American Police Society and has worked in private practice for 15 years.

Judge Martinotti has litigated both criminal and civil cases, which I am confident will make him a well-balanced jurist. Judge Martinotti possesses a sharp legal mind, a breadth of experience, solid judicial temperament, and he is prepared to do the work of a Federal jurist.

The American Bar Association Standing Committee on the Federal Judiciary rated Judge Martinotti unanimously "well qualified," giving him their highest possible rating.

Last October, the Judiciary Committee voted unanimously in support of Judge Martinotti's nomination. I am confident this well-qualified nominee will serve honorably on the Federal bench.

While I am pleased Senate leadership has finally scheduled this vote, this body still has work to do when it comes to confirming more well-qualified judicial nominees. Currently, our Federal courts have 83 Federal vacancies nationwide, 30 of which have been deemed judicial emergencies. Despite the number of vacancies, the pace of judicial confirmations has been historically slow. Last year, the Senate confirmed only 11 judicial nominees, matching the record for confirming the fewest number of judicial nominees in more than half a century. Now, more than 17 months into this Congress, there have only been 20 judges who have been confirmed. Yet, with a Democratic majority during the last 2

years of the Bush administration, the Senate confirmed 68 judges.

I fear the Senate's slow pace of confirming judges will harm the judicial branch and make it harder for Americans to achieve simple justice in federal courts.

Even after today's vote, we still have 2 of the 17 judicial seats vacant in the District of New Jersey and 24 judicial nominees pending on the Senate floor. We have to do better.

We do not yet have an agreement to vote on the nomination of Judge Julien Neals, whose nomination has now been pending before the Senate for 18 months.

His nomination has the support of both myself and Senator MENENDEZ and was unanimously passed out of the Judiciary Committee last November. It is time that Judge Neals' nomination receive a full Senate vote. Our Federal justice system cannot function as intended when critical posts are left vacant for months on end. It hurts our economy, our civil rights, and the overall principles of justice in our country.

I urge our leadership to act to address the judicial vacancy crisis. I also urge my fellow Senators to vote to confirm Judge Martinotti as U.S. district judge for the Federal district court of New Jersey. Thank you, Madam President.

The PRESIDING OFFICER. The senior Senator from New Jersey.

Mr. MENENDEZ. Madam President, I am pleased to be joining my colleague from New Jersey Senator BOOKER in his recommendation to the President of Judge Martinotti and today on the floor in support of his confirmation. It was one of Senator BOOKER's first opportunities to recommend to the President an exemplary recommendation that again I was very pleased to support.

I rise to express to all of my colleagues my wholehearted, enthusiastic support of Brian Martinotti's nomination and his confirmation by the Senate to the U.S. District Court for the District of New Jersey. In his life and in his career, he has shown himself to be a judge with the necessary wisdom, experience, and judicial temperament the district court requires.

For well over a decade, he has been a superior court judge in Bergen County, NJ, which—for my colleagues who may not be familiar with the State—is a densely populated county, with all the inherent needs for someone such as Judge Martinotti, who has repeatedly shown the intellect, the judicial temperament, and the observance of precedent—which I know is very important to many of my colleagues—that it takes to make a fair judgment based on the law.

Beyond his glowing record in the family division and now in the civil division, where he is handling a diverse caseload from complex mass tort litigation to environmental lawsuits, housing issues, and countless other areas, the fact is, he is exceptionally

well regarded by those who have appeared before him on both sides of the table, the defense and the prosecution tables. That says more about the man than any list of cases he has heard.

He has a wealth of knowledge from private practice, and that will help him as he deals with the practitioners who will be before him. He has a wealth of experience in mediation before the Bergen County Superior Court, in the New Jersey State Board of Mediation, American Arbitration Association, National Arbitration and Mediation, and as a court-approved mediator.

His experience is impeccable, going back to his time as a judicial law secretary for the Honorable Roger M. Kahn and when he was a student at Fordham University and Seton Hall University School of Law in Newark.

He has been a leader in New Jersey, the very definition of a pillar of the community, serving as a member of the Bergen County Law and Public Safety Institute, Palisades Medical Center, the March of Dimes, the Bergen County Community College Foundation, the Italian American Police Society of New Jersey, not to mention the many honors and awards he has received from countless community organizations.

Given his experience, his temperament, his proven abilities, and personally knowing the kind of man he is, it is no wonder his name is before the U.S. Senate today. Indeed, the American Bar Association Standing Committee on the Federal Judiciary unanimously rated him "well qualified" to serve on the bench. That is the bar association's highest rating.

As I have traveled the globe as a senior member of the Senate Foreign Relations Committee, I can tell you that when we talk about American exceptionalism, one of the elements of American exceptionalism is the rule of law. As part of that rule of law, it is the judicial functions that take place—where any citizen can expect to walk into a courtroom in the Nation, find themselves before a judge who is enormously well qualified, and who can have a fair day as it relates to the issues they are litigating before that court. That is an essential part of American exceptionalism.

Judge Martinotti, upon confirmation, will only enhance that American exceptionalism, far beyond even where it is today.

I urge my colleagues to join us and unanimously confirm this eminently qualified nominee to the U.S. District Court for the District of New Jersey.

With that, I yield the floor.

Mr. LEAHY. Madam President, this week we mark the signing of the Declaration of Independence and celebrate the values upon which this Nation was founded. Back in Vermont, we celebrated on July 4 with parades and fireworks displays, as did millions of Americans around the country. It is important, however, not only to celebrate our values on July 4, but also to

live by them year-round. This means that we should embrace those public servants who, while working hard to build better lives for themselves and their families, enrich our communities and contribute so much to our Nation.

We see the true meaning of patriotism in those hard-working Americans who ask what they can do for their country and pursue public service. Chief Judge Merrick Garland, who has served for nearly two decades as a Federal judge on the DC Circuit Court of Appeals, is a perfect example. Chief Judge Garland also served for several years in the Justice Department, where he was charged with leading the Federal response to the deadliest act of domestic terrorism in our history. This is a person who makes us all proud to be Americans, but instead of honoring Chief Judge Garland's service, Senate Republicans have undertaken an unrelenting campaign of partisan obstruction against his nomination to the Supreme Court.

Recently, Reid Hoffman, the Silicon Valley entrepreneur and founder of LinkedIn, penned an op-ed criticizing the Senate Republican blockade of Chief Judge Garland's nomination:

"Effectively, [Majority Leader McConnell] and his allies are in the midst of a year-long strike.

"Imagine if entire departments at Fortune 500 companies announced they were going to stop performing key functions of their job for a year or more, with no possibility of moving forward until a new CEO took over. Investors would start dumping their stock. Customers would seek out alternatives. Competitors would make these companies pay for such dysfunctional gridlock. Eventually executives and employees would be fired.

"In Silicon Valley, such behavior would be corporate suicide."

I could not agree more. We cannot allow Senate Republicans to unilaterally decide to refuse to do its job, and essentially create "dysfunctional gridlock." I ask unanimous consent that a copy of the article be printed in the RECORD at the conclusion of my remarks.

Instead of scheduling a hearing for an impeccably qualified nominee, Republicans are holding Chief Judge Garland's nomination hostage in their hopes that the Republican Party's presumptive Presidential nominee will be elected and make a different nomination. This is the same candidate who has displayed a stunning misunderstanding of the role of the judiciary and who accused a sitting Federal judge of bias simply because of his heritage. While some Senate Republicans have rightly condemned those racist attacks on Judge Gonzalo Curiel, they are still standing by the man who launched those racist attacks.

As former U.S. Attorney Steven Dettelbach in Ohio put it in a recent op-ed, "if country really does come before party, how can anyone who calls himself an American leader still support this man who openly berates public servants based on their race?" I ask unanimous consent that a copy of the

article be printed in the RECORD at the conclusion of my remarks.

Senate Republicans' partisan refusal to do their jobs extends to the lower courts as well. In the 19 months that Senate Republicans have had a majority, they have allowed just 21 votes on judicial nominations. As a result, Federal judicial vacancies have skyrocketed. This is not how the Senate should operate, and the American people deserve better. When Democrats controlled the Senate during the last 2 years of President George W. Bush's administration, we worked hard to confirm judicial nominees with bipartisan support. During those 2 years, we confirmed 68 of President Bush's judicial nominees and reduced the number of judicial vacancies to 34. We even held hearings and confirmation votes into late September of the election year, because filling vacancies with qualified nominees with bipartisan support is more important than scoring partisan points. Senate Republicans have not shared that priority, or else they would never have allowed judicial vacancies to nearly double from 43 to 83 since they have controlled the Senate, leaving two dozen judicial nominations pending on the Senate floor.

The nominee the Senate will finally vote on today, Brian Martinotti, was nominated over a year ago to fill a vacancy on the U.S. District Court for the District of New Jersey. Judge Martinotti has been awaiting a floor vote for over 250 days, even though his nomination was reported by voice vote by the Judiciary Committee last October. Since 2002, Judge Martinotti has served as a judge on the Superior Court of New Jersey. Prior to that, he spent 15 years in private practice. Judge Martinotti has also served as a public defender, as a prosecutor, and as a municipal tax attorney. The ABA Standing Committee on the Federal Judiciary unanimously rated Martinotti "Well Qualified" to serve on the district court, its highest rating. He has the support of his home State Senators, Mr. MENENDEZ and Mr. BOOKER. I support his nomination.

Even after today's vote, there will still be 24 judicial nominations languishing on the Senate floor. One of them was reported at the same time as Judge Martinotti and has also been awaiting a vote for over 8 months. We still do not have an agreement to vote on the nomination of Edward Stanton to the Western District of Tennessee. In 2010, the Senate voted unanimously to confirm Mr. Stanton as the U.S. attorney for that district. His current nomination is supported by his two Republican home State Senators, and he was unanimously voice voted out of the Judiciary Committee. I hope the Republican Senators from Tennessee will be able to persuade the majority leader to schedule a vote for Mr. Stanton's nomination before we leave for the 7-week recess he has scheduled.

It is the Senate's duty to ensure that our independent judiciary can function.

Senate Republicans must be responsible and act on Chief Judge Garland's nomination, as well as the 24 judicial nominations that are languishing on the Senate floor.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Medium.com, June 29, 2016]

#### OBSTRUCTIONISM IS TERRIBLE GOVERNANCE

(By Reid Hoffman)

As an entrepreneur and investor, I prioritize construction and collaboration. Whether it's a five-person start-up or a global giant, the companies that are most productive are the ones whose employees operate with a shared sense of purpose and a clear set of policies for responding to changing conditions and new opportunities.

That's why I'm so appalled by what's happening in the Senate this year, and how starkly it illustrates the differences between Silicon Valley and Washington, DC.

Just hours after Supreme Court Justice Antonin Scalia unexpectedly died in February, Senate Majority Leader Mitch McConnell told the American people not to expect a replacement any time soon. The vacancy created by Justice Scalia's passing, McConnell insisted, "should not be filled until we have a new president."

Since then, Leader McConnell's position has remained unchanged—he won't even meet with any nominee until January 2017. Effectively, he and his allies are in the midst of a year-long strike.

Imagine if entire departments at Fortune 500 companies announced they were going to stop performing key functions of their job for a year or more, with no possibility of moving forward until a new CEO took over. Investors would start dumping their stock. Customers would seek out alternatives. Competitors would make these companies pay for such dysfunctional gridlock. Eventually executives and employees would be fired.

In Silicon Valley, such behavior would be corporate suicide. In Washington, DC, it's business as usual.

So Mitch McConnell's strike goes on and on—he refuses to even meet with any nominee until a new president takes office. Other senators like Richard Burr (R-NC), Sen. Chuck Grassley (R-IA), and Rob Portman (R-OH) have followed McConnell's lead, either refusing to even informally meet with Judge Garland, or meeting but still reflexively insisting that a formal Senate hearing is not an option.

But the Constitution does not give the job of nominating and appointing Supreme Court Justices to the next President—it gives it to the current one.

Respecting the Constitution's authority and the obligations of his job, President Obama nominated a potential replacement for Justice Scalia, Judge Merrick Garland, on March 16. To date, only two Republican senators—Senator Mark Kirk (R-IL) and Susan Collins (R-ME)—have resisted peer pressure and publicly stated that Judge Garland should be given a formal hearing. The rest are joining McConnell in his strike.

In a 2013 op-ed, New York Times columnist Thomas L. Friedman explored the difference between Silicon Valley's conception of collaboration and Washington, DC's. In the nation's capital, Friedman observed, collaboration "is an act of treason—something you do when you cross over and vote with the other party." In Silicon Valley, companies that are "trying to kill each other in one market [are] working together in another—to better serve customers."

As Friedman went on to explain, Silicon Valley's version of collaboration doesn't

mean groupthink or lockstep consensus. Vital organizations and industries cultivate diverse and competitive viewpoints, because it's this very "clash of ideas" that tends to produce innovation and adaptation.

But Silicon Valley situates its clash of ideas within a larger framework of cooperation and compromise, under the premise that what's good for the ecosystem as a whole will also benefit individual players, even if they sometimes have competing interests.

What's striking about McConnell's stance is how vividly it illustrates DC's preference for reflexive obstruction over the kind of collaboration and consensus-building that characterizes healthy and productive organizations.

It's not as if the Constitution doesn't give senators like McConnell broad room in which to operate in dissenting fashion. Specifically, Article II, Section 2 of the Constitution invests the President with the power to make appointments "by and with the advice and consent of the Senate."

This language clearly gives the Senate a confirming but open-ended role. It doesn't instruct the Senate to hold hearing within a specific number of days, for example. It doesn't even explicitly mandate that the Senate must hold formal hearings or meet with a nominee.

The Constitution simply directs the Senate to advise the President in his effort to nominate and appoint nominees. But how can the Senate credibly and effectively fulfill this obligation without making any effort to gather information about nominees and deliberate on their qualifications?

In keeping the language so broad in this instance, the Constitution effectively places the Senate in far more than a rubber-stamping role. As Barack Obama himself suggested in 2006, when he was still a senator, the Senate arguably has the authority to examine a nominee's "philosophy, ideology, and record," not just his general character.

What Article II, Section 2 ultimately does, in other words, is set the stage for clashes of ideas, albeit within a larger framework of collaboration and consensus. Importantly, the Constitution advises the Senate to work "with" the President, not "against" him or in opposition to him.

And it presumes that the Senate will indeed be working.

Still, instead of holding hearings in which to assess Judge Garland's suitability for the Court, McConnell and his colleagues are doing nothing.

If their obstructionism goes unchecked, it will continue harming American citizens in very tangible ways. Having only eight Justices on the bench increases the possibility of a deadlock.

When cases end in deadlock, nothing gets decided. Resources are expended, and the American public is left hanging until the Court can hear the case again or consider another case with similar issues.

This has happened twice already—last week when the Court deadlocked on an immigration reform case, and in March, in a case regarding whether individuals should be required to guarantee their spouses' loans. Traditionally, laws regarding this practice have differed in various parts of the country, creating confusion for small business owners and their spouses about what their obligations are. Unfortunately, this confusion and lack of clarity will persist indefinitely because of the Court's deadlock.

What would happen if President Obama told Congress not to bother passing any more bills this year, because he had decided he would automatically veto any of them that made it to his desk? How many private sector organizations would tolerate personnel who refuse to perform key job responsibilities until the current boss is replaced by someone new?

According to Gallup, 84 percent of Americans disapprove of the way Congress is doing its job. Or perhaps more accurately, not doing its job.

Indeed, from 1900 through 1980, it took the Senate a median of 17 days after nomination to confirm or reject a Supreme Court nominee.

Like today's senators, those senators took an oath to support the Constitution and "faithfully discharge the duties of [their] office."

Now, however, scorched-earth partisanship has thoroughly compromised Congress's ability to operate functionally. More than 100 days have passed since President Obama nominated Judge Garland—and there aren't even any plans to begin hearings yet.

No wonder so many Americans believe our government is severely broken.

If we truly want to make Congress a collaborative enterprise that efficiently works in the interests of the American people, the American people must apply pressure directly to senators like McConnell, Burr, and Portman.

While some people might insist that these senators are simply fighting partisanship with partisanship, blocking a nominee that a Democrat president is trying to force upon American voters without their say, that's a false equivalency.

President Obama is a democratically elected official, faithfully discharging the duties of his office. In democracies, we aren't always governed by the people or the parties that we voted for. But when officials are elected, we must respect their authority, as long as they're exercising that authority within the bounds of whatever regulatory frameworks are in place to guide them. (In this case, it's the Constitution.)

Every American citizen should understand this. And our elected officials shouldn't just understand this—they should be setting an example that all Americans can follow. Instead, McConnell and his colleagues are doing the opposite.

Ultimately, they're not telling President Obama that they don't think his nominee is a good one. They're saying that they refuse to acknowledge President Obama's legitimacy as an elected official.

This kind of partisanship is endemic in Washington, DC now. But this latest behavior is such an egregious example of Congressional dysfunction that Senator McConnell and his colleagues must be held accountable.

That's why I have signed this Change.org petition urging McConnell to give Judge Garland a hearing, and why I strongly encourage others to join me.

Our elected officials must understand that we, the American people, expect them to perform the duties of their office, even when that means working with other elected officials from different parties.

They must understand that we're fed up with business as usual in Washington, DC. They must understand that we want leaders who look for opportunities to collaborate and work together productively, instead of pursuing obstructionism that serves political parties rather than citizens.

So let Mitch McConnell know that it's time to quit abdicating around. Tell him to do his job and schedule a hearing for Judge Merrick Garland now.

IS TRUMP'S ATTACK ON JUDGE RACIST? IF IT QUACKS LIKE A DUCK . . .

(By Steven Dettelbach)

Judge Gonzalo Curiel, the latest victim of Donald Trump's racist attacks, is not allowed to defend himself under the judicial rules. So I will defend him.

I will defend him as a fellow, former federal prosecutor. I will defend him because I

am the husband of an immigrant from Mexico and the father of our two children. And I will defend him as an American, because what Donald Trump is doing is decidedly un-American.

Curiel is a respected jurist. Before becoming a judge, he made a name for almost two decades as a federal prosecutor, investigating and prosecuting Mexican drug cartels. As a former U.S. attorney and career prosecutor myself, I know firsthand that these cases are some of the most difficult and dangerous in our criminal justice system. That work earned Curiel death threats from those same Mexican cartels he fought, threats that did not deter him from protecting this nation for a moment.

Unlike Trump, Curiel comes from Midwestern working-class roots. He was born just hours to the west of here—a place Trump will visit to become the GOP nominee—in Indiana. His parents came to this country and became citizens. His father worked in the steel mills, just like those who built our community, to help put his son through both Indiana University and law school. He was first appointed to the bench in California by another immigrant, Republican Gov. Arnold Schwarzenegger, and then elevated to the federal bench by President Obama after unanimous U.S. Senate confirmation. Curiel's life is a true American success story.

None of this matters to Trump, though. All that matters to Trump are that: 1) Trump thinks he is losing in the Trump University lawsuit before Curiel and 2) the judge's parents came to this country from Mexico, which is of course the only reason he can possibly be losing the lawsuit. Apparently, when things don't go Trump's way, he plays the race card.

In truth, Trump can't hold a candle to Curiel. Unlike Trump, Curiel has done more than talk about protecting our borders. He spent two decades on the border, fighting dangerous drug cartels. Unlike Trump, Curiel was not born as heir to a real estate empire. He earned all he has achieved through hard work and merit.

I am a lawyer. I know that it can be frustrating when a case does not go your way. But Trump's response to losing in that case is to play the race card. That temperament is not only un-presidential, it is dangerous.

Those supporting Trump need to re-evaluate whether lending their own credibility to his racist rants is still tenable. If country really does come before party, how can anyone who calls himself an American leader still support this man who openly berates public servants based on their race?

As a U.S. attorney, I saw the way career law enforcement like Gonzalo Curiel worked to protect us. As a parent, I tell my children that all citizens in this nation must be judged based on what they accomplish, not how they look or where their parents were born. That is America.

Trump evidently understands neither of these basic points. Trump and his supporters say they value plain talk. Well, here is some: Ignoring a person's record and judging him based on ethnic heritage is the definition of racism. Trump did just that. What does that make him?

Quack.

Mr. MENENDEZ. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. THUNE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the question is, Will the Senate advise and consent to the Martinotti nomination?

Mr. THUNE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from South Carolina (Mr. GRAHAM) and the Senator from Utah (Mr. LEE).

Mr. DURBIN. I announce that the Senator from Ohio (Mr. BROWN) is necessarily absent.

The PRESIDING OFFICER (Mr. TOOMEY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 92, nays 5, as follows:

[Rollcall Vote No. 118 Ex.]

YEAS—92

Alexander	Flake	Murray
Ayotte	Franken	Nelson
Baldwin	Gardner	Paul
Barrasso	Gillibrand	Perdue
Bennet	Grassley	Peters
Blumenthal	Hatch	Portman
Booker	Heinrich	Reed
Boozman	Heitkamp	Reid
Boxer	Heller	Roberts
Burr	Hirono	Rounds
Cantwell	Hoeven	Rubio
Capito	Inhofe	Sanders
Cardin	Isakson	Schatz
Carper	Johnson	Schumer
Casey	Kaine	Scott
Cassidy	King	Sessions
Coats	Kirk	Shaheen
Cochran	Klobuchar	Shelby
Collins	Lankford	Stabenow
Coons	Leahy	Tester
Corker	Manchin	Thune
Cornyn	Markey	Tillis
Cotton	McCain	Toomey
Cruz	McCaskill	Udall
Daines	McConnell	Vitter
Donnelly	Menendez	Warner
Durbin	Merkley	Warren
Enzi	Mikulski	Whitehouse
Ernst	Moran	Wicker
Feinstein	Murkowski	Wyden
Fischer	Murphy	

NAYS—5

Blunt	Risch	Sullivan
Crapo	Sasse	

NOT VOTING—3

Brown	Graham	Lee
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The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table and the President will be immediately notified of the Senate's action.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order the Senate will now resume legislative session.

## STOP DANGEROUS SANCTUARY CITIES ACT—MOTION TO PROCEED—Continued

### CLOTURE MOTION

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair lays before the